

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Minnesota Citizens in Defense of
Marriage,

Complainant,
vs.

ORDER OF DISMISSAL

Johnson Volunteer Committee,

Respondent.

On November 1, 2006, Minnesota Citizens in Defense of Marriage filed a Complaint with the Office of Administrative Hearings alleging the Johnson Volunteer Committee violated Minn. Stat. § 211B.06. The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge on November 1, 2006, pursuant to Minn. Stat. § 211B.33. A copy of the Complaint and attachments were sent by United States mail to the Respondent on November 1, 2006.

After reviewing the Complaint and attachments, the Administrative Law Judge finds that the Complaint does not state prima facie violations of Minn. Stat. § 211B.06. Therefore, Complaint is dismissed.

Based upon the Complaint and the supporting filings and for the reasons set out in the attached Memorandum,

IT IS ORDERED:

That the Complaint filed by Minnesota Citizens in Defense of Marriage against the Johnson Volunteer Committee is DISMISSED.

Dated: November 3, 2006

/s/ Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

NOTICE

Under Minn. Stat. § 211B.36, subd. 5, this order is the final decision in this matter and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. § § 14.63 to 14.69.

MEMORANDUM

Dean Johnson is running for re-election to the Minnesota State Senate (District 13). The Complaint alleges that the Johnson Volunteer Committee (Respondent) ran an advertisement in the *Sauk Center Herald* newspaper on October 24, 2006, that describes Senator Johnson as “your pro-life senator,” and states that Senator Johnson “received 100% ratings from MCCL in 2003 and 2005.”¹ The Complaint alleges that the advertisement is false because over his past four-year term in office, Senator Johnson has received only a 50% rating from MCCL, and Senator Johnson has failed to support some pro-life legislation.² According to the Complainant, Senator Johnson is not a pro-life candidate and the advertisement’s claims violate Minn. Stat. § 211B.06.

Minn. Stat. § 211B.06 prohibits a person from intentionally preparing or disseminating false campaign material that the person knows is false or communicates to others with reckless disregard as to whether it is false. In *Kennedy v. Voss*,³ the Minnesota Supreme Court observed that the statute is directed against the evil of making false statements of fact and not against unfavorable deductions, or inferences based on fact. Expressions of opinion, rhetoric, and figurative language are generally protected speech if, in context, the reader would understand that the statement is not a representation of fact.⁴ A challenged statement’s specificity and verifiability, as well as its literary and public context, are factors to be considered when distinguishing between fact and opinion.⁵

The advertisement states that Senator Johnson received 100% ratings from MCCL in 2003 and 2005. The Complainant has attached as exhibits to the Complaint MCCL’s “Legislative Accountability Rating” for the years 2003 – 2006. According to these exhibits, Senator Johnson did receive 100% ratings for the 2003 and 2005 legislative years. The fact that Senator Johnson received 0% ratings for legislative years 2004 and 2006, does not render the statement in the advertisement false. Instead, the advertisement states correctly that Senator Johnson received 100% ratings from MCCL in 2003 and 2005. The Complainant

¹ Complaint Ex. 1. “MCCL” stands for Minnesota Citizens Concerned for Life.

² Complaint Exs. 3 and 4.

³ 304 N.W.2d 299 (Minn. 1981).

⁴ *Jadwin v. Minneapolis Star and Tribune*, 390 N.W.2d 437, 441 (Minn. App. 1986), citing *Old Dominion Branch No. 496, National Assoc. of Letter Carriers v. Austin*, 418 U.S. 264, 284-86 (1974); *Greenbelt Coop. Publishing Assoc. v. Bresler*, 398 U.S. 6, 13-14 (1970). See also *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 16-17 (1990); *Hunter v. Hartman*, 545 N.W.2d 699, 706 (Minn. App. 1996).

⁵ *Diesen v. Hessburg*, 455 N.W.2d 446, 451 (Minn. 1990).

has failed to allege a prima facie violation of Minn. Stat. § 211B.06 with respect to this allegation. Respondent is not required to disclose Senator Johnson's MCCL ratings in other years; it is only prohibited from disseminating false campaign material. The statement identified by the Complainant is not false and therefore cannot form the basis of a violation of section 211B.06.

The Complainant has also failed to allege a prima facie violation of Minn. Stat. § 211B.06 with respect to the phrase "your pro-life senator." The phrase "pro-life" is an expression of opinion and not a statement of fact that can be verified as either true or false. Even if Senator Johnson failed to support some pro-life legislation, as the Complainant alleges, that alone is insufficient to render the phrase false. This allegation is not sufficient to state a prima facie violation of section 211B.06. The Complaint is dismissed.

B.L.N.